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10 X03060/422531

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 CALIFORNIA FOUNDATION FOR
14 INDEPENDENT LIVING CENTERS;
15 CALIFORNIAS FOR DISABILITY
16 RIGHTS, INC; and MARIAN GRAY, as
17 a Taxpayer,

18 Plaintiffs,

19 v.

20 CITY OF OAKLAND; OFFICE OF
21 EMERGENCY SERVICES of the
22 Oakland Fire Department;
23 DEPARTMENT OF HUMAN SERVICES
24 of the City of Oakland;
25 OFFICE OF PARKS AND
26 RECREATION of the City of Oakland;
27 RENEE DOMINGO,
28 in her official capacity of Director of the
29 Office of Emergency Services; ANDREA
30 YOUNGDAHL, in her official capacity as
31 Director of the Department of Human
32 Services; AUDREE JONES-TAYLOR, in
33 her official capacity as Director of the
34 Office of Parks and Recreation; and
35 DEBORAH EDGARLY, in here official
36 capacity as City Administrator of the
37 City of Oakland;

38 Defendants.

Case No. 07-04608 EDL

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT**

1 Defendants CITY OF OAKLAND; OFFICE OF EMERGENCY SERVICES of the
2 Oakland Fire Department; DEPARTMENT OF HUMAN SERVICES of the City of Oakland;
3 OFFICE OF PARKS AND RECREATION of the City of Oakland; RENEE DOMINGO, in
4 her official capacity of Director of Emergency Services; ANDREA YOUNGDAHL, in her
5 official capacity as Director of the Department of Human Services; AUDREE JONES-
6 TAYLOR, in her capacity as Director of the Office of Parks and Recreation; and
7 DEBORAH EDGERLY, erroneously named herein as "DEBORAH EDGARLY" in here
8 official capacity as City Administrator of the City of Oakland answer First Amended
9 Complaint herein as follows:
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12 INTRODUCTION

13 I.

- 14 1. Defendants deny each and every allegation set forth in paragraph 1 of the First
15 Amended Complaint.
- 16 2. Defendants deny each and every allegation set forth in paragraph 2 of the First
17 Amended Complaint.
- 18 3. Defendants deny each and every allegation set forth in paragraph 3 of the First
19 Amended Complaint.
- 20 4. Defendants deny each and every allegation set forth in paragraph 4 of the First
21 Amended Complaint.
- 22 5. Defendants deny each and every allegation set forth in paragraph 5 of the First
23 Amended Complaint.
- 24 6. Defendants deny each and every allegation set forth in paragraph 6 of the First
25 Amended Complaint.
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1 7. Defendants admit each and every allegation set forth in paragraph 7 of the First
2 Amended Complaint.

3 8. Defendants lack information or belief sufficient to enable them to answer
4 paragraphs 8 of the First Amended Complaint and based on this lack of information and
5 belief deny each and every allegation contained therein.

6 9. Defendants deny each and every allegation set forth in paragraph 9 of the First
7 Amended Complaint.

8 **JURISDICTION**

9
10 10. Defendants admit each and every allegation set forth in paragraph 10 of the First
11 Amended Complaint.

12 11. Defendants admit each and every allegation set forth in paragraph 11 of the First
13 Amended Complaint.

14 12. Defendants admit each and every allegation set forth in paragraph 12 of the First
15 Amended Complaint.

16 **VENUE**

17 13. Defendants admit that this case is properly venued in the Northern District of
18 California as alleged in paragraph 13 of the First Amended Complaint.

19 **PARTIES**

20 14. Defendants lack information or belief sufficient to enable them to answer
21 paragraphs 14 of the First Amended Complaint and based on this lack of information and
22 belief deny each and every allegation contained therein

23 15. Defendants lack information or belief sufficient to enable them to answer
24 paragraphs 15 of the First Amended Complaint and based on this lack of information and
25 belief deny each and every allegation contained therein.
26

1 16. Defendants lack information or belief sufficient to enable them to answer
2 paragraphs 16 of the First Complaint and based on this lack of information and belief deny
3 each and every allegation contained therein.

4 17. Defendants lack information or belief sufficient to enable them to answer
5 paragraphs 17 of the First Complaint and based on this lack of information and belief deny
6 each and every allegation contained therein.

7 18. Defendants deny each and every allegation set forth in paragraph 18 of the First
8 Amended Complaint

9 19. Defendants deny each and every allegation set forth in paragraph 19 of the First
10 Amended Complaint.

11 20. Defendants deny each and every allegation set forth in paragraph 20 of the First
12 Amended Complaint.

13 21. Defendants deny each and every allegation set forth in paragraph 21 of the First
14 Amended Complaint.

15 22. Defendants deny each and every allegation set forth in paragraph 22 of the First
16 Amended Complaint.

17 23. Defendants deny each and every allegation set forth in paragraph 23 of the First
18 Amended Complaint.

19 24. Defendants deny each and every allegation set forth in paragraph 24 of the First
20 Amended Complaint.

21 25. Defendants deny each and every allegation set forth in paragraph 25 of the First
22 Amended Complaint.

23 **FACTS**

24 26. Defendants lack information or belief sufficient to enable them to answer
25 paragraphs 26 of the First Complaint and based on this lack of information and belief deny
26

1 each and every allegation contained therein.

2 27. Defendants lack information or belief sufficient to enable them to answer
3 paragraphs 27 of the First Complaint and based on this lack of information and belief deny
4 each and every allegation contained therein.

5 28. Defendants lack information or belief sufficient to enable them to answer
6 paragraphs 28 of the First Complaint and based on this lack of information and belief deny
7 each and every allegation contained therein.

8 29. Defendants lack information or belief sufficient to enable them to answer
9 paragraphs 29 of the First Complaint and based on this lack of information and belief deny
10 each and every allegation contained therein.

11 30. Defendants lack information or belief sufficient to enable them to answer
12 paragraphs 30 of the First Complaint and based on this lack of information and belief deny
13 each and every allegation contained therein.

14 31. Defendants lack information or belief sufficient to enable them to answer
15 paragraphs 31 of the First Complaint and based on this lack of information and belief deny
16 each and every allegation contained therein.

17 32. Defendants lack information or belief sufficient to enable them to answer
18 paragraphs 32 of the First Complaint and based on this lack of information and belief deny
19 each and every allegation contained therein.

20 33. Defendants lack information or belief sufficient to enable them to answer
21 paragraphs 33 of the First Complaint and based on this lack of information and belief deny
22 each and every allegation contained therein.

23 34. Defendants lack information or belief sufficient to enable them to answer
24 paragraphs 34 of the First Complaint and based on this lack of information and belief deny
25 each and every allegation contained therein.
26

1 35. Defendants lack information or belief sufficient to enable them to answer
2 paragraphs 35 of the First Complaint and based on this lack of information and belief deny
3 each and every allegation contained therein.

4 36. Defendants lack information or belief sufficient to enable them to answer
5 paragraphs 36 of the First Complaint and based on this lack of information and belief deny
6 each and every allegation contained therein.

7 37. Defendants lack information or belief sufficient to enable them to answer
8 paragraphs 37 of the First Complaint and based on this lack of information and belief deny
9 each and every allegation contained therein.

10 38. Defendants lack information or belief sufficient to enable them to answer
11 paragraphs 38 of the First Complaint and based on this lack of information and belief deny
12 each and every allegation contained therein.

13 39. Defendants lack information or belief sufficient to enable them to answer
14 paragraphs 39 of the First Complaint and based on this lack of information and belief deny
15 each and every allegation contained therein.

16 40. Defendants lack information or belief sufficient to enable them to answer
17 paragraphs 40 of the First Complaint and based on this lack of information and belief deny
18 each and every allegation contained therein.

19 41. Defendants lack information or belief sufficient to enable them to answer
20 paragraphs 41 of the First Complaint and based on this lack of information and belief deny
21 each and every allegation contained therein.

22 42. Defendants lack information or belief sufficient to enable them to answer
23 paragraphs 42 of the First Complaint and based on this lack of information and belief deny
24 each and every allegation contained therein.

25 43. Defendants lack information or belief sufficient to enable them to answer
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1 paragraphs 43 of the First Complaint and based on this lack of information and belief deny
2 each and every allegation contained therein.

3 44. Defendants lack information or belief sufficient to enable them to answer
4 paragraphs 44 of the First Complaint and based on this lack of information and belief deny
5 each and every allegation contained therein.

6 45. Defendants lack information or belief sufficient to enable them to answer
7 paragraphs 45 of the First Complaint and based on this lack of information and belief deny
8 each and every allegation contained therein.

9 46. Defendants lack information or belief sufficient to enable them to answer
10 paragraphs 46 of the First Complaint and based on this lack of information and belief deny
11 each and every allegation contained therein.

12 47. Defendants lack information or belief sufficient to enable them to answer
13 paragraphs 47 of the First Complaint and based on this lack of information and belief deny
14 each and every allegation contained therein.

15 48. Defendants lack information or belief sufficient to enable them to answer
16 paragraphs 48 of the First Complaint and based on this lack of information and belief deny
17 each and every allegation contained therein.

18 49. Defendants lack information or belief sufficient to enable them to answer
19 paragraphs 49 of the First Complaint and based on this lack of information and belief deny
20 each and every allegation contained therein.

21 50. Defendants lack information or belief sufficient to enable them to answer
22 paragraphs 50 of the First Complaint and based on this lack of information and belief deny
23 each and every allegation contained therein.

24 51. Defendants lack information or belief sufficient to enable them to answer
25 paragraphs 51 of the First Complaint and based on this lack of information and belief deny
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1 each and every allegation contained therein.

2 52. Defendants lack information or belief sufficient to enable them to answer
3 paragraphs 52 of the First Complaint and based on this lack of information and belief deny
4 each and every allegation contained therein.

5 53. Defendants admit each and every allegation set forth in paragraph 53 of the First
6 Amended Complaint.

7 54. Defendants lack information or belief sufficient to enable them to answer
8 paragraphs 54 of the First Complaint and based on this lack of information and belief deny
9 each and every allegation contained therein.

10 55. Defendants admit each and every allegation set forth in paragraph 55 of the First
11 Amended Complaint.

12 56. Defendants deny each and every allegation set forth in paragraph 56 of the First
13 Amended Complaint.

14 57. Defendants deny each and every allegation set forth in paragraph 57 of the First
15 Amended Complaint.

16 58. Defendants deny each and every allegation set forth in paragraph 58 of the First
17 Amended Complaint.

18 59. Defendants deny each and every allegation set forth in paragraph 59 of the First
19 Amended Complaint.

20 60. Defendants admit each and every allegation set forth in paragraph 60 of the First
21 Amended Complaint.

22 61. Defendants deny each and every allegation set forth in paragraph 61 of the First
23 Amended Complaint.

24 62. Defendants deny each and every allegation set forth in paragraph 62 of the First
25 Amended Complaint.

26

FIRST CAUSE OF ACTION

(Violation of Americans with Disabilities Act)

63. In response to paragraphs 63 of the First Amended Complaint on file herein, defendant incorporates herein, by this reference as though fully set forth at length, his answers to the First Amended Complaint set forth in paragraphs 1 through 62, inclusive.

64. Defendants admit each and every allegation set forth in paragraph 64 of the First Amended Complaint.

65. Defendants admit each and every allegation set forth in paragraph 65 of the First Amended Complaint.

66. Defendants admit each and every allegation set forth in paragraph 66 of the First Amended Complaint.

67. Defendants admit each and every allegation set forth in paragraph 67 of the First Amended Complaint.

68. Defendants lack information or belief sufficient to enable them to answer paragraph 68 of the First Complaint and based on this lack of information and belief deny each and every allegation contained therein.

69. Defendants deny each and every allegation set forth in paragraph 69 of the First Amended Complaint.

70. Defendants deny each and every allegation set forth in paragraph 70 of the First Amended Complaint.

71. Defendants deny each and every allegation set forth in paragraph 71 of the First Amended Complaint.

SECOND CAUSE OF ACTION

(Violation of Section 504 of the Rehabilitation Act of 1973)

72. In response to paragraphs 72 of the First Amended Complaint on file herein,

1 defendant incorporates herein, by this reference as though fully set forth at length, his
2 answers to the First Amended Complaint set forth in paragraphs 1 through 71, inclusive.

3 73. Defendants admit each and every allegation set forth in paragraph 73 of the First
4 Amended Complaint.

5 74. Defendants lack information or belief sufficient to enable them to answer paragraph
6 74 of the First Complaint and based on this lack of information and belief deny each and
7 every allegation contained therein.

8 75. Defendants admit each and every allegation set forth in paragraph 75 of the First
9 Amended Complaint.

10 76. Defendants deny each and every allegation set forth in paragraph 76 of the First
11 Amended Complaint.

12 77. Defendants deny each and every allegation set forth in paragraph 77 of the First
13 Amended Complaint.

14 78. Defendants deny each and every allegation set forth in paragraph 78 of the First
15 Amended Complaint.

16 **THIRD CAUSE OF ACTION**
17 (Violation of California Civil Code §54, et seq.)

18 79. In response to paragraphs 79 of the First Amended Complaint on file herein,
19 defendant incorporates herein, by this reference as though fully set forth at length, his
20 answers to the First Amended Complaint set forth in paragraphs 1 through 78, inclusive.

21 80. Defendants deny each and every allegation set forth in paragraph 80 of the First
22 Amended Complaint.

23 81. Defendants deny each and every allegation set forth in paragraph 81 of the First
24 Amended Complaint.

25 82. Defendants deny each and every allegation set forth in paragraph 82 of the First
26 Amended Complaint.

1 83. Defendants deny each and every allegation set forth in paragraph 83 of the First
2 Amended Complaint.

3 84. Defendants deny each and every allegation set forth in paragraph 84 of the First
4 Amended Complaint.

5 **FOURTH CAUSE OF ACTION**

6 (Violation of California Government Code §11135, et seq.)

7 85. In response to paragraphs 85 of the First Amended Complaint on file herein,
8 defendant incorporates herein, by this reference as though fully set forth at length, his
9 answers to the First Amended Complaint set forth in paragraphs 1 through 84, inclusive.

10 86. Defendants admit each and every allegation set forth in paragraph 86 of the First
11 Amended Complaint.

12 87. Defendants admit each and every allegation set forth in paragraph 87 of the First
13 Amended Complaint.

14 88. Defendants deny each and every allegation set forth in paragraph 88 of the First
15 Amended Complaint.

16 89. Defendants deny each and every allegation set forth in paragraph 89 of the First
17 Amended Complaint.

18 90. Defendants deny each and every allegation set forth in paragraph 90 of the First
19 Amended Complaint.

20 **FIFTH CAUSE OF ACTION**

21 (Declaratory Relief)

22 91. In response to paragraphs 91 of the First Amended Complaint on file herein,
23 defendant incorporates herein, by this reference as though fully set forth at length, his
24 answers to the First Amended Complaint set forth in paragraphs 1 through 90, inclusive.

25 92. Defendants admit each and every allegation set forth in paragraph 92
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1 of the First Amended Complaint.

2 93. Defendants deny each and every allegation set forth in paragraph 93 of the First
3 Amended Complaint.
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6 **AFFIRMATIVE DEFENSES**

7 **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**, Defendants state that
8 the First Amended Complaint fails to state a cause of action against these answering
9 Defendants.

10 **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**, Defendants allege
11 that the injuries and damages Plaintiffs complain of, if any, resulted from the acts and/or
12 omissions of others, and without any fault on the part of these answering Defendants.

13 **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**, Defendants allege that
14 all actions by them, or their employees, agents or representatives were undertaken in
15 good faith and with the reasonable belief that said actions were valid, necessary and
16 constitutionally proper.

17 **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**, Defendants alleges
18 that the First Amended Complaint and each cause of action contained therein is barred to
19 the extent plaintiffs have failed to exhaust her appropriate administrative remedies or
20 comply with the appropriate administrative requirements.

21 **AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**, Defendants allege that
22 defendants' acts were privileged under applicable statutes and case law.

23 **AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**, Defendants assert that
24 Plaintiffs' state claims are barred due to plaintiffs' failure to comply with the Government
25 Tort Claims Act, Government Code section 905, et seq.
26

1 **AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**, Defendants assert
2 that each of the facilities where plaintiffs allege their rights were violated was an “already
3 existing facility” within the meaning of the ADA and exempt from any access improvement
4 requirements under the applicable guidelines.

5 **AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**, defendants allege
6 that plaintiffs lack standing to bring these causes of action.

7 **AS AND FOR AN NINTH AFFIRMATIVE DEFENSE**, Defendants allege that
8 the accommodations requested by Plaintiffs are not readily achievable, feasible, or
9 required by applicable codes and/or would result in an undue burden on Defendants and
10 others.

11 **AS AND FOR A TENTH AFFIRMATIVE DEFENSE**, Defendants allege that
12 Plaintiffs are not entitled to recover any attorneys’ fees under the ADA or state law on the
13 ground that Defendants were already taking measures to remedy the sought after relief
14 prior to the lawsuit.

15 **AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**, Defendants allege
16 that Plaintiffs claims are barred, in whole or part, by the doctrine of laches.

17 **AS AND FOR A TWELTH AFFIRMATIVE DEFENSE**, Defendants allege
18 that Plaintiffs claims are barred, in whole or in part, by the doctrine of waiver.

19 **AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**, Defendants
20 allege that Plaintiffs claims are barred, in whole or in part, by the doctrine of estoppel.

21 **AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**, Defendants
22 allege that Plaintiffs claims are barred, in whole or in part, by the doctrine of unclean
23 hands.

24 **AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**, Defendants alleges
25 that some or all of Plaintiffs’ claims are moot, and this court lacks jurisdiction.
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WHEREFORE, Defendant prays that:

1. Plaintiffs take nothing by their Complaint;
2. Defendants have judgment against Plaintiffs;
3. Defendants be awarded his costs of suit; and
4. For such other and further relief as the Court may deem proper.

DATED: October 30, 2007

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Assistant City Attorney
WILLIAM E. SIMMONS, Supervising Trial Attorney
STEPHEN Q. ROWELL, Deputy City Attorney

By: _____/s/
Attorneys for Defendants